REMARKS

Claims 54 and 55 are amended. Claims 1-39 are cancelled without prejudice to pursuing them in a later application. Upon entry of this amendment, claims 40-56 will be pending.

Claim Rejections - 35 USC §112

Claim 54 is amended to state that the breath guard comprises a generally rectangular breath guard frame (e.g., 65 in the application), a transparent panel (e.g., 61) supported by the frame, and brackets (e.g., 131, 161) extending above the frame, and that the first and second power assist devices are connected to respective brackets on the frame such that the power assist devices are higher than the breath guard frame when the breath guard is in said generally horizontal lowered position (see, for example, Fig. 3A). Claim 55 is amended to state that the second power assist device (e.g., 97) is connected to a respective bracket (e.g., 161) on the breath guard frame (e.g., 65) such that the entire second power assist device remains higher than the breath guard frame as the breath guard moves from its lowered position to its raised position (see, for example, Fig. 3C).

As thus amended, claims 54 and 55 are submitted to comply with 35 USC §112.

Claim Rejections - 35 USC §103

Claims 40-42, 46, 50, 54 and 55 are rejected as unpatentable over Perzon (US 6,141,984) in view of Fukushima et al. (JP 401315559A), further in view of Rhoads (US DES 188,719) and still further in view of Topper et al. (US 6,547,346 B2) and further in view of Richter (US 6,766,616 B2). Applicant respectfully disagrees for the reasons given below. Further, applicant submits herewith a Declaration under Rule 37 CFR 1.131

"swearing behind" the Richter reference, thus eliminating this patent as prior art against the present application.

Claim 40 states that applicant's food product server includes a cabinet (e.g., 5 in Figs. 1 and 2) having a counter top surface (e.g., 31 in Fig. 6A) defining a generally horizontal plane, a recess (e.g., 23) below the generally horizontal plane for receiving one or more food serving pans (e.g., 27) for holding food products, a breath guard (e.g., 21) mounted for pivotal movement with respect to the cabinet between a lowered substantially horizontal position for covering said food products in the recess and a raised position, and first and second power assist devices (e.g., 95, 97) mounted such that they are not lower than the breath guard when the breath guard is in its generally horizontal position and such that they do not extend down into the recess below the generally horizontal plane of the counter top as the breath guard is moved between its raised and lowered positions, as is evident from Figs. 1, 2, and 3A-3C. There are several advantages to this arrangement. First, food from the pans cannot spill down onto the power assist devices. Second, clear and unobstructed access to the walls of recess is provided, making them easy to clean. This is important in a food service environment where sanitary conditions are required. Third, the length of the recess (and thus the overall length of the cabinet) is reduced, since there is no need to provide extra room in the recess for the power assist devices. Further, because the power assist devices are located outside the recess, a person reaching into the recess is not exposed to contact with the devices, which is desirable for reasons of safety and sanitation.

In sharp contrast, the power assist devices in Fukushima are at a location lower than the cover plate 3 and extend down into the recess of the cabinet. This prior art arrangement is

not desirable in a food service system, since the devices collect debris and make cleaning of the recess walls more difficult. Also, since food pans come in standard dimensions, extra room must be added to the length of the recess to accommodate the power assist devices, thus increasing the overall length of the cabinet. Further, the power assist devices are exposed to a person reaching into the cabinet, which is undesirable for reasons of safety and sanitation. It is apparent, therefore, that applicant's claimed design represents a substantial and non-obvious improvement over Fukushima.

Nor would applicant's claimed power assist arrangement have been obvious in view of Topper et al. which shows gas springs 62, 64 mounted lower (on the recess side) than the service door 40. Like Fukushjima, the gas springs of Topper et al. are at a location lower than the service door when the door is moved to a generally horizontal position as the door is swung from its closed position in Fig. 2 to the open position shown in Fig. 3. Even if the door 40 was modified to have a horizontal closing, Topper et al. teaches mounting the gas springs 62, 64 at a location lower (on the recess side) than the service door in that position. In other words, if the left pivot side of the service 40 door shown in Fig. 1 of Topper et al. were dropped down so that the door closed in a horizontal position, the gas springs 62, 64 would also be moved down to a position lower than the door. There is nothing suggesting that the power gas springs 62, 64 would ever be mounted in a position in which they are not lower than the service door 40, as in applicant's claimed design. Thus, even the hypothetical combination of Perzon, Fukushima and Topper et al. fails to show or suggest the subject matter of amended claim 40.

Regarding Richter, applicant submits herewith the 1.131 Declaration of Michael McGaha. As evidenced by the Declaration

and attached Appendices A-C, applicant completed the claimed invention prior to August 27, 2003, the filing date of the Richter patent. (All dates have been blocked out, but Mr. McGaha attests to the fact that the evidence and acts referred to predate August 27, 2003.) Accordingly, this patent is not prior art against the claims of this application.

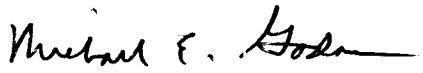
Claims 41, 42, 46, 50, 54 and 55 depend, either directly or indirectly, from claim 40 and are submitted to be allowable for at least the same reasons as claim 40. Further, the dependent claims cite additional features not shown or suggested by the prior art. For example, claim 54 states that that the first and second power assist devices are connected to respective brackets on the frame such that the power assist devices are higher than the breath guard frame when the breath guard is in said generally horizontal lowered position (see, for example, Fig. 3A), and claim 55 states that the second power assist device (e.g., 97) is connected to a respective bracket (e.g., 161) on the breath guard frame (e.g., 65) such that the entire second power assist device remains higher than the breath guard frame as the breath guard moves from its lowered position to its raised position (see, for example, Fig. 3C). These features are neither shown nor suggested in the prior art.

CONCLUSION

The Commissioner is hereby authorized to charge the one-month Extension of Time to Deposit Account No. 19-1345. The Commissioner is also authorized to charge any under-payment or credit any over-payment to Deposit Account No. 19-1345 for this amendment.

In view of the foregoing, favorable consideration and allowance of this application is requested.

Respectfully submitted,



Michael E. Godar, Reg. No. 28,416
SENNIGER POWERS LLP
100 North Broadway, 17th Floor
St. Louis, Missouri 63102
(314) 345-7000

MEG/dlw/bcw